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9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 RANDAL N. WIIDEMAN)

13 Plaintiff,)

14 v.)

15 RENEE BAKER,)

16 Defendant.)

Case No. 3:10-cv-00342-RCJ-WGC
ORDER
MOTION TO DISMISS BASED ON
SUGGESTION OF DEATH

17
18 Defendant Renee Baker, by and through counsel, Catherine Cortez Masto, Attorney
19 General of the State of Nevada, and Robert Simon, Deputy Attorney General, hereby
20 requests that the above entitled matter be dismissed based on the death of Plaintiff Randal
21 Wiideman.

22 On October 23, 2011, Defendant is informed and believes Plaintiff passed away. Ex.
23 A, Certified Copy of Death Certificate. On October 31, 2011, Defendant filed a *Suggestion of*
24 *Death* after receiving no contact from Plaintiff's relatives or heirs regarding the desire to
25 continue with this lawsuit. Fed. R. Civ. P. 25 (a) states:

26 (a) Death.

27 (1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is
28 not extinguished, the court may order substitution of the proper party. A motion
for substitution may be made by any party or by the decedent's successor or
representative. If the motion is not made within 90 days after service of a

1 statement noting the death, the action by or against the decedent must be
2 dismissed.

3 (2) *Continuation Among the Remaining Parties.* After a party's death, if the right
4 sought to be enforced survives only to or against the remaining parties, the
5 action does not abate, but proceeds in favor of or against the remaining parties.
6 The death should be noted on the record.


7 (3) *Service.* A motion to substitute, together with a notice of hearing, must be
8 served on the parties as provided in Rule 5 and on nonparties as provided in
9 Rule 4. A statement noting death must be served in the same manner. Service
10 may be made in any judicial district.

11 More than 90 days have passed since Defendant filed the *Suggestion of Death*. During that
12 time no successor to Plaintiff or representative of Plaintiff's estate has contacted Defendant
13 regarding this lawsuit. In addition, no successor or representative has filed the required
14 statement of the fact of the death pursuant to Fed. R. Civ. P. 25.

15 Therefore, pursuant to Fed. R. Civ. P. 25, Defendant respectfully requests this matter
16 be dismissed based on Plaintiff's death and the failure of any successor or representative
17 requesting appointment as the substitute Plaintiff.

18 ORDER

19 IT IS SO ORDERED.

20 

21 ROBERT C. JONES

22 United States Chief District Judge

23 Dated: This 13th day of February, 2012.